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Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
OF THE STATE OF CALIFORNIA

In the Matter of:	)	ESCROW LICENSE NO.: 963-1915
	)	
THE COMMISSIONER OF BUSINESS	)	STATEMENT OF FACTS IN SUPPORT OF
OVERSIGHT,	)	ORDER TO DISCONTINUE VIOLATIONS
	)	PURSUANT TO FINANCIAL CODE
Complainant,	)	SECTION 17602 AND NOTICE OF INTENT
	)	TO MAKE ORDER FINAL
v.	)	
	)	
TOWER ESCROW, INC.,	)	
	)	
Respondent.	)	
	)	
	)	
	)	

The Commissioner of Business Oversight (Commissioner) is informed and believes and based upon such information and belief, alleges and charges as follows:

**I.**

**Introduction**

1. The Commissioner seeks to Order Tower Escrow, Inc. (Tower) to discontinue violations of Financial Code section 17414 and California Code of Regulations, title 10, sections 1738, 1738.1, and 1738.2, pursuant to Financial Code section 17602.

2. Tower is an escrow agent licensed by the Commissioner pursuant to the Escrow Law

STATEMENT OF FACTS IN SUPPORT OF ORDER TO DISCONTINUE VIOLATIONS AND  
NOTICE OF INTENT TO MAKE ORDER FINAL

1 (Fin. Code § 17000 et seq.). Tower has its principal place of business located at 3600 Wilshire Blvd.,  
2 Suite #426, Los Angeles, CA 90010.

## 3 II.

### 4 Statement of Facts

5 3. Under Financial Code section 17414 and California Code of Regulations, title 10,  
6 sections 1738 and 1738.2, escrow funds shall not be disbursed unless authorized by the principal(s)  
7 to the escrow transaction. Tower disbursed escrow funds without proper authorization from a  
8 principal of the escrow transaction on two separate occasions, as described in detail below.

9 4. Under California Code of Regulations, title 10, section 1738.1, debit balances are  
10 prohibited in trust accounts. Tower allowed a debit balance in the amount of \$20,000.00 to exist in  
11 its trust account from April 3, 2017 until June 7, 2017 and a debit balance to exist in the amount of  
12 \$59,651.80 from May 25, 2017 until June 7, 2017, respectively.

13 5. Under Financial Code section 17414, all licensees must immediately report an  
14 abstraction or misappropriation of escrow funds in writing to the Commissioner. Tower failed to  
15 immediately report the misappropriation of Tower's trust funds to the Commissioner that occurred  
16 on April 3, 2017.

17 6. On November 7, 2016, the principal of Escrow #T-014670-JC signed an Escrow  
18 Instructions Sale of Business with Transfer of Liquor License stating that "electronic signatures  
19 cannot be accepted for any instructions concerning the release or disbursement of funds from  
20 escrow, for any items requiring acknowledgement by a Notary Public, or any other document (s) at  
21 Escrow Holder's discretion." Furthermore, the principal also signed a closing instruction stating that  
22 \$30,000.00 from the principal's proceeds that were held by Tower would be released to the principal  
23 after receiving a Certificate of Payment issued from the State Board of Equalization, the  
24 Employment Development Department, and the Franchise Tax Board.

25 7. On or about March 27, 2017, a non-principal, assuming the identity of the actual  
26 principal, emailed Tower requesting a disbursement of escrow funds through a check payable to an  
27 individual that was not related to the escrow transaction and located in Texas. On March 29, 2017,  
28 the non-principal requested that funds be disbursed instead by wire to a bank account in Texas that

1 neither belonged to the actual principal or was in the actual principal's name.

2 8. On or about March 30, 2017, Tower submitted wire instructions to their bank with the  
3 account information provided by the non-principal. Subsequently that day, Tower was notified by  
4 their bank that the wire transfer to the account provided by the non-principal did not go through.

5 9. On or about March 31, 2017, Tower notified the non-principal about the unsuccessful  
6 wire transfer. The non-principal then provided another bank account to Tower that was also not in  
7 the name of the actual principal and located in Minnesota. Furthermore, the non-principal requested  
8 funds in the wrong amount and provided Tower with the incorrect bank routing number.  
9 Subsequently that day, Tower was notified by their bank that the wire transfer to the non-principal  
10 did not go through and Tower informed the non-principal that the wire transfer was not successful.  
11 Subsequently, the non-principal requested information on how to make an international wire transfer  
12 to China. Tower provided a list of required information to the non-principal and in response to the  
13 request, the non-principal provided another bank account to Tower that was not in the name of the  
14 actual principal and requested a disbursement of \$85,000.00 in funds, which were more than the  
15 proceeds due to the actual principal.

16 10. On or about April 3, 2017, the non-principal signed wire instructions and sent it to  
17 Tower by email. Subsequently, Tower disbursed the actual Principal's sale proceeds to the bank  
18 account provided by the Non-Principal in the amount of \$20,000.00, despite the prohibition  
19 contained in the escrow instructions against the acceptance of electronic signatures for instructions  
20 concerning the disbursement of funds and the prior instruction that the actual principal's proceeds  
21 would only be release after receiving a Certificate of Payment issued from the State Board of  
22 Equalization, the Employment Development Department, and the Franchise Tax Board.

23 11. On or about April 4, 2017, the actual principal's real estate agent informed Tower that  
24 the bank account provided by the non-principal to Tower did not belong to the actual principal and  
25 that the actual principal never sent an email to Tower regarding the sale proceeds.

26 12. As a result of Tower's unauthorized disbursement of the actual principal's escrow  
27 funds to the non-principal, a debit balance of \$20,000.00 was created in Escrow # T-014670-JC. The  
28 debit balance in Tower's trust account existed from April 3, 2017 until June 7, 2017, when Tower

1 fully replaced the debit balance.

2 13. A second incident of unauthorized disbursement of trust funds by Tower occurred in  
3 June 2017. On or about April 16, 2017, the principal of Escrow #T-015042-CH, signed a Statement  
4 of Information form provided by Tower that contained the principal's email address and residence,  
5 which was located in California.

6 14. On or about May 12, 2017, the principal signed the Addendum to Residential  
7 Purchase Agreement and Joint Escrow Instructions Dated November 23, 2016 stating that  
8 "electronic signatures cannot be accepted for any instructions concerning the release or disbursement  
9 of funds from escrow, for any items requiring acknowledgement by a Notary Public, or any other  
10 document (s) at Escrow Holder's discretion."

11 15. On or about May 22, 2017, a non-principal, assuming the identity of the actual  
12 principal and using a different email address than the actual principal's email address that was  
13 previously provided to Tower, emailed Tower requesting a disbursement of escrow funds to a bank  
14 account located in Florida that was not in the name of the actual principal. The non-principal also  
15 provided to Tower an additional bank account located in Texas that was in the name of a corporation  
16 unaffiliated with the escrow transaction or the actual principal, with instructions to disburse part of  
17 the funds to the corporate bank account located in Texas and the rest to the bank account located in  
18 Florida.

19 16. On or about May 23, 2017, the non-principal requested that Tower solely disburse the  
20 escrow funds to the corporate bank account located in Texas. In response, Tower asked the non-  
21 principal for the incorporation documents related to the corporation that owns the bank account in  
22 Texas.

23 17. On or about May 24, 2017, the non-principal sent the incorporation documents to  
24 Tower. Tower then sent amended Escrow Instructions to the non-principal to be signed and sent  
25 back to Tower by email, despite the prohibition in the escrow instructions against the acceptance of  
26 electronic signatures for instructions concerning the disbursement of funds.

27 18. On or about May 25, 2017, Tower informed the non-principal that Tower's bank  
28 requested that the non-principal provide the address on record for the corporate bank account in

Texas. In response, the non-principal provided Tower with the corporate bank account's address on record. However, the address provided by the non-principal contained a different zip code from the address contained in the incorporation documents that were previously provided to Tower. Despite this discrepancy and despite the prohibition in the escrow instructions against the acceptance of electronic signatures for instructions concerning the disbursement of funds, Tower disbursed the actual principal's escrow funds to the corporate bank account in Texas provided by the non-principal in the amount of \$59,651.80.

19. On or about June 5, 2017, the actual principal contacted Tower and notified Tower that the email address used by the non-principal to communicate with Tower was not his email address and that the corporate bank account in Texas that Tower wired the actual principal's escrow funds to did not belong to the actual principal.

20. As a result of Tower's unauthorized disbursement of the actual principal's escrow funds to the non-principal, a debit balance of \$59,651.80 was created in Escrow #T-015042-CH. The debit balance in Tower's trust account existed from May 25, 2017 until June 7, 2017, when Tower fully replaced the debit balance.

21. On or about June 7, 2017, Tower reported the trust shortage Tower discovered on June 5, 2017 to the Commissioner. Upon inquiry by the Commissioner, Tower also disclosed that on June 7, 2017 that they had discovered a trust shortage occurred on April 4, 2017. Tower did not previously disclose the April 4, 2017 trust shortage to the Commissioner.

### III.

#### Applicable Law

22. Financial Code section 17602 provides:

If it appears to the commissioner that any licensed escrow agent has violated its articles of incorporation, or any law or rule binding upon it, the commissioner shall, by written order addressed to the agent direct the discontinuance of such violation. The order shall be effective immediately, but shall not become final except in accordance with the provisions of Section 17604.

23. Financial Code section 17604 provides:

No order issued pursuant to Section 17602 or 17603 may become final except after notice to any licensed escrow agent affected thereby of the

intention of the commissioner to make such order final and of the reasons therefore and that upon receipt of a request the matter will be set down for hearing to commence within 15 business days after such receipt unless the licensed agent affected consents to a later date. If no hearing is requested within 30 days after the mailing of such notice and none is ordered by the commissioner, the order may become final without hearing and the licensed escrow agent shall immediately discontinue the practices named in the order. If a hearing is requested or ordered, it shall be held in accordance with the provisions of the Administrative Procedure Act , Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all the powers granted thereunder. If upon the hearing, it appears to the commissioner that the licensed agent is conducting business in an unsafe and injurious manner or is violating its articles of incorporation or any law binding upon it, the commissioner shall make the order of discontinuance final and the licensed escrow agent shall immediately discontinue the practices named in the order.

NOW, BASED ON THE FOREGOING, AND GOOD CAUSE APPEARING, the Commissioner of Business Oversight is issuing an Order to Discontinue Violations under the provisions of Financial Code sections 17602 and 17604, and notifying Tower Escrow, Inc. of her intention to make the order final.

Dated: February 8, 2018  
Los Angeles, CA

JAN LYNN OWEN  
Commissioner of Business Oversight

By \_\_\_\_\_  
Johnny Vuong  
Senior Counsel  
Enforcement Division